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Husaini bin Yaacob v Tan Teo Siang

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO K-02–307–01 OF 2012
ABDUL MALIK ISHAK, LINTON ALBERT AND UMI KALTHUM JJCA
16 JUNE 2014

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Contract — Agreement — Breach — Jual janji agreement — Loan given with a time-frame to settle within one year from agreement — Transfer of ownership of land — Land had been sold to another party — Loan unsettled before expiry of agreement — High Court judge awarded discounted claim — Whether borrower willing and able to settle loan sum within agreed time — Whether judge correct in awarding discounted sum

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The appellant had entered into a *jual janji* agreement with the respondent where the former agreed to lend the sum of RM60,000 ('the loan sum') to the respondent with the time frame of one year from the agreement. In return, the respondent was to transfer ownership of a piece of land ('the land') to the appellant. Dispute arose when the respondent tried to settle the loan with the appellant and redeem the land. There was no response from the appellant. The appellant promised to retransfer the land to the respondent but failed to do so. The respondent later found out that the appellant had transferred the property to one Poh Chew Song ('Poh') for the sum of RM600,000. Poh had paid only RM300,000 and in turn, sold the land to Ng Giew Poh ('Ng'). This caused the respondent to file a claim in the High Court for the recovery of the full purchase price at market value minus the loan sum from the appellant. The appellant argued that the respondent had failed to settle the loan sum and redeem the land before the expiry of the agreement. The High Court judge ('the judge') held that the respondent had proven his case and accepted the respondent's evidence that the respondent did try to pay the loan but the appellant refused to accept the payment. The judge awarded the respondent a sum of RM1.5m as damages, which was a discounted sum from the respondent's claim of RM2.2m. In the present appeal, the issues that arose for the court's determination were whether the respondent was willing and able to settle the loan sum within the agreed time; and whether the judge was correct in awarding the sum of RM1.5m to the respondent.

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Held, allowing the appeal with costs of RM10,000:

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(1) The respondent had failed to prove on the balance of probabilities that he was ready and willing to pay the loan to the appellant. The respondent had admitted that he could not make the repayment because he did not have the money. The learned trial judge had misdirected himself when he

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accepted the respondent's testimony that the letter dated 15 July 2008/P2 was sent and received by the appellant when evidence showed that the said letter could not have been received by the appellant when it was posted on 17 August 2008, that is, more than a month after the date of the letter was written. The judge had failed to appreciate the fact that since it was the respondent's land that was transferred to the appellant, and since the respondent knew the appellant's telephone number, why did the respondent see the need to deal with the appellant through an intermediary and thus giving rise to unnecessary questions of who said what, who did what and so on. It was obvious that the judge did not examine the issue whether the respondent was not only willing but also able to repay the loan. This amounted to a serious misdirection on His Lordship's part (see paras 12–13).

(2) His Lordship was in error in relying on the valuation report as a basis to award RM1.5m to the respondent without calling the property valuer as a witness who had prepared the report the authenticity and the contents of the valuation report remained doubtful. Therefore it should not be accepted as evidence. The trial judge in his reasoning stated that the valuation report could be accepted as evidence once it was placed in the agreed bundle of documents and the maker need not be called to testify. Further, His Lordship had given the discount without explaining cogently why discount was necessary especially seeing that the sum awarded was not the sum prayed for by the respondent (see paras 15 & 20).

[Bahasa Malaysia summary

Perayu telah memasuki perjanjian jual janji dengan responden di mana perayu bersetuju untuk meminjamkan wang sejumlah RM60,000 ('jumlah pinjaman') kepada responden dalam tempoh masa satu tahun dari perjanjian. Sebagai balasan, responden dikehendaki memindahkan milikan sebidang tanah ('tanah') kepada perayu. Pertikaian berbangkit apabila responden mencuba untuk menyelesaikan pinjaman dengan perayu dan menebus tanah tersebut. Tidak terdapat jawapan daripada perayu. Perayu berjanji untuk memindahkan semula tanah tersebut kepada responden tetapi gagal berbuat sedemikian. Responden kemudiannya mendapati bahawa perayu telah memindahkan tanah tersebut kepada seorang yang bernama Poh Chew Song ('Poh') untuk sejumlah RM600,000. Poh hanya membayar RM300,000 dan sebaliknya, menjual tanah tersebut kepada Ng Giew Poh ('Ng'). Ini menyebabkan responden memfailkan tuntutan di Mahkamah Tinggi untuk mendapatkan kembali harga belian penuh pada nilai pasaran ditolak jumlah pinjaman daripada perayu. Perayu berhujah bahawa responden telah gagal untuk menyelesaikan jumlah pinjaman dan menebus tanah tersebut sebelum tamat perjanjian tersebut. Hakim Mahkamah Tinggi ('hakim') memutuskan bahawa responden telah membuktikan kesnya dan menerima keterangan

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responden bahawa responden telah cuba untuk membayar pinjaman tersebut tetapi perayu enggan menerima bayaran tersebut. Hakim mengawardkan responden jumlah sebanyak RM1.5 juta sebagai ganti rugi, yang mana adalah jumlah diskaun daripada tuntutan responden sebanyak RM2.2 juta. Dalam rayuan ini, isu-isu yang berbangkit untuk penentuan mahkamah adalah sama ada responden sanggup dan boleh menyelesaikan jumlah pinjaman dalam masa yang dipersetujui; dan sama ada hakim adalah betul dalam mengawardkan jumlah RM1.5 juta tersebut kepada responden.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM10,000:

(1) Responden telah gagal untuk membuktikan atas imbangan kebarangkalian bahawa dia bersedia dan sanggup untuk membayar pinjaman kepada perayu. Responden telah mengaku bahawa dia tidak dapat membuat bayaran balik kerana dia tidak mempunyai wang. Hakim perbicaraan yang bijaksana telah salah arah dirinya apabila beliau menerima keterangan responden bahawa surat bertarikh 15 Julai 2008/P2 telah dihantar dan diterima oleh perayu apabila keterangan menunjukkan bahawa surat tersebut tidak mungkin diterima oleh perayu apabila ianya diposkan pada 17 Ogos 2008, iaitu, lebih daripada sebulan selepas tarikh surat ditulis. Hakim telah gagal untuk menilai fakta memandangkan ia adalah tanah responden yang dipindahkan kepada perayu, dan memandangkan responden mengetahui nombor telefon perayu, mengapa responden perlu berurusan dengan perayu melalui orang tengah dan oleh itu membangkitkan soalan-soalan yang tidak perlu mengenai siapa kata apa, siapa yang buat apa dan lain-lain. Adalah jelas bahawa hakim tidak meneliti isu sama ada responden bukan sahaja sanggup tetapi juga boleh membayar pinjaman tersebut. Ini merupakan salah arah serius oleh pihak Yang Arif (lihat perenggan 12–13).

(2) Yang Arif tersilap dengan bergantung ke atas laporan nilai sebagai asas untuk mengawardkan RM1.5 juta kepada responden tanpa memanggil penilai hartanah sebagai saksi yang menyediakan laporan tersebut, ketulenan dan kandungan laporan penilaian kekal meragukan. Oleh itu ia tidak patut diterima sebagai keterangan. Hakim bicara dalam alasannnya menyatakan bahawa laporan penilaian boleh diterima sebagai keterangan apabila ia diletakkan di dalam ikatan dokumen dan pembuat tidak perlu dipanggil untuk memberi keterangan. Selanjutnya, Yang Arif telah memberikan diskaun tanpa menjelaskan dengan jelas mengapa diskaun adalah perlu terutamanya memandangkan jumlah yang diawardkan tersebut bukan jumlah yang dipohon oleh responden (lihat perenggan 15 & 20).]

Notes

For a case on breach, see 3(2) *Mallal's Digest* (4th Ed, 2013 Reissue) para 2962.

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Cases referred to

Henry Trading Co Ltd v Harun [1966] 2 MLJ 281, FC (not folld)
Malaysia National Insurance Sdn Bhd v Malaysia Rubber Development Corporation [1986] 2 MLJ 124, SC (refd)

Legislation referred to

Evidence Act 1950 s 114(g)

Appeal from: Civil Suit No 22–288 of 2009 (High Court, Alor Setar)

Simon Murali (Lio & Partners) for the appellant.
S Anthonysamy (Aziz, Anthony & Co) for the respondent.

Umi Kalthum JCA:

[1] This is an appeal against the order of the High Court allowing the respondent's (the plaintiff in the court below) claim against the appellant (the defendant in the court below) for damages as a result of the appellant's breach of a 'Jual Janji' agreement.

THE FACTS

[2] The appellant entered into a 'Jual Janji' agreement with the respondent on 21 August 2007 ('the agreement') whereby the appellant agreed to lend the sum of RM60,000 ('the loan sum') to the respondent. In return the respondent was to transfer ownership of a piece of land held under title Geran No 16615, Surat Kechil No 3520 (Bahagian Padang Lalang No 380), Mukim Sungei Seluang, Daerah Kulim, Kedah ('the land') to the appellant. The contents of the letter containing the agreement (at p 141 of the RR, vol 2) is reproduced below.

21.8.2007
Tan Teo Siang
(No K/P: 440601-02-5043)
No 416-A Jalan Sungai Seluang
09600 Lunas
Kedah Darul Aman

Husaini bin Yaacob
No 1, Persiaran Bertam Perdana 7/1
Penang Golf Resort
13200 Kepala Batas, Seberang Perai Utara,

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Pulau Pinang

Tuan,

PER: JUAL JANJI UNTUK PINJAMAN SEBANYAK RM60,000.00

Perkara diatas adalah dirujuk.

Saya dengan ini menyerahkan satu (1) salinan asal Surat hakmilik (geran) bagi hartanah yang terkandung dibawah Geran No 16615, Surat Kechil No 3520 (Bahagian Padang Lalang No 380) Mukim Sungei Seluang, Daerah Kulim, Kedah Darul Aman dengan keluasan seluas 21 relong dan 424 jemba untuk dipegang oleh ENCIK HUSAINI BIN YAACOB (No K/P: 650221-02-5637) iaitu Pemberi Pinjaman terhadap Jual Janji ini.

Surat hakmilik ini akan dipegang dan diproses urusan Pindahmilik tanah dan didaftarkan ke atas nama HUSAINI BIN YAACOB dari tarikh Surat Jual Janji ini ditandatangani. Surat hakmilik ini akan diserahkan semula kepada Penerima Pinjaman sebaik sahaja Penerima Pinjaman menjelaskan keseluruhan bayaran pinjaman tersebut termasuk segala tunggakan yang ada berkaitan dengan urusan Jual Janji ini.

Sekiranya saya sebagai Penerima Pinjaman telah menjelaskan kesemua bayaran termasuk tunggakan sebelum tamat tempoh yang dipersetujui maka saya HUSAINI BIN YAACOB dikehendaki memindah semula mengikut pemilik geran asal dengan SEGERA dan kos pindah milik ditanggung oleh Penerima Pinjaman.

Saya sebagai Penerima Pinjaman dengan ini membenarkan Pemberi Pinjaman memasukkan kaveat keatas hartanah tersebut termasuk lain-lain transaksi untuk menjaga kepentingan Pemberi Pinjaman.

Sekian terima kasih.

Yang Benar,

.....	.....
TAN TEO SING	HUSAINI BIN YAACOB
(No K/P: 440601-02-5043)	(No K/P: 650221-02-5367)
Penerima Pinjaman	Pemberi Pinjaman

TAMAT TEMPOH: 20/8/2008

[3] The time frame for the respondent to settle the loan was set to be one year from the date of the agreement, that was, on or before 20 August 2008. At trial, the existence of the terms of the agreement were not disputed by the appellant and the respondent.

[4] However, the respondent claimed that dispute arose when the respondent tried to settle the loan with the appellant. The respondent had instructed his solicitor Messrs Haniff & Partners, to issue a letter dated 15 July 2008 (P2, p 139 of the RR vol 2) to the defendant expressing his intention to settle the loan sum and redeem the land. But there was no response from the

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appellant. The respondent had resorted to get his friend Abdul Halim bin Osman ('PW3') to personally hand a copy of solicitor's letter to the appellant on 8 August 2008. According to PW3 he met the appellant again on 16 August 2008 and on 19 August 2008 and the appellant promised that he would retransfer the land to the respondent. However the appellant failed to do so. The respondent later found out that the appellant had transferred the property to a person named Poh Chew Song on 16 October 2008 for the sum of RM600,000. The respondent filed his claim to recover the full purchase price at market value minus the loan sum from the appellant.

[5] The appellant in his evidence, testified that the respondent had failed to settle the loan sum and redeem the land before the expiry of the agreement. The appellant did try to contact the respondent several times but failed each time to do so. The appellant then exercised his right and sold the land to the Poh Chew Song on 6 November 2008 for the sum of RM600,000. However, the appellant received only RM300,000 from Poh Chew Song. Poh Chew Song had subsequently sold the land to Ng Giew Poh on 7 April 2009.

BEFORE THE HIGH COURT

[6] At the conclusion of the trial, the learned trial judge found that the respondent had proven his case. The learned trial judge accepted the respondent's evidence that the respondent did try to pay the loan with interest to the appellant before the expiry of the agreement but that the appellant refused to accept payment from the respondent. The learned judge awarded the respondent the sum of RM1.5m as damages. It was a discounted sum from the respondent's claim of RM2.2m based on a valuation report (exh P5) of the land.

THE APPEAL

[7] In the appeal before us learned counsel for the appellant raised two issues for our determination namely:

(a) whether the respondent/plaintiff was willing and able to settle the loan sum he had taken from the appellant/defendant within the agreed time frame to redeem the land; and

(b) whether the learned judge was correct in awarding the sum of RM1.5m to the respondent.

Whether respondent was willing and able to settle the loan sum

[8] It was the submission of the appellant that the learned trial judge had misdirected himself on the findings of fact and the applicable law when he

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accepted the evidence of the respondent that the respondent did try to contact the appellant but could not locate the appellant in order for the respondent to inform the appellant that the respondent was ready to repay the loan sum together with interest of 12%pa. It was the appellant's submission that the respondent was not in the position to settle the loan sum within the time frame set in the agreement based on four points as follows:

(a) the respondent made no attempts to directly communicate with the appellant to express his intention to settle the loan sum and redeem the land. Through the evidence of PW3, the respondent knew the telephone number of the appellant. Yet, the respondent admitted that he made no attempts to contact the appellant when the time came for repayment of the loan and redemption of the land. It was submitted that if the respondent had the genuine intention to repay the loan and redeem the land, he could have just contacted the appellant. Thus it was submitted that it could be inferred that the respondent's failure to do so showed that he neither had the intention nor was in the position to repay the loan;

(b) the letter dated 15 July 2008, (marked as 'exh P2') issued by Messrs Haniff & Partners for the respondent was never delivered to the appellant whether by post or personal service. According to PW1, a legal practitioner employed by the said firm of solicitors and who acted for the respondent at the material time, the said letter was sent out by way of AR registered post on the same day as dated therein. The date of postage would be indicated on the AR card. However, the date of postage on the AR card that was produced in court and marked as exh P2B was 17 August 2008 (even though we noted that the 'Akuan Menerima Surat Berdaftar Dalam Negeri' on the AR card was stated as 19 July 2008), that is, a lapse of more than a month between the date of the said letter and the date of its alleged posting. That being the case, the appellant submitted that there was no nexus between the AR card P2B and the said letter P2, and that the said letter was never actually delivered to the appellant. The appellant had also denied ever receiving the letter either by way of AR registered post or personal service. Hence, there was no notification by the respondent expressing an intention to repay the loan for the redemption of the land within the stipulated time;

(c) the respondent did not have the financial means to settle the debt at the material time. It was submitted that the testimony of the respondent, together with the evidence of his two other witnesses PW1 and PW3, clearly established that the respondent did not have the financial resources to settle the debt by the due date. Through his own testimony, the respondent admitted that he was not able to repay the loan sum within the time frame. PW1, in re-examination, claimed that the repayment of the loan was to be undertaken by another person known as

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Sidek Petronas. The person known as Sidek Petronas only emerged during re-examination of PW1. There was no mention of such a person in the evidence of PW1 in examination-in-chief nor during cross-examination. Neither did the respondent plead in his statement of claim on the existence of Sidek Petronas and the vital role he allegedly played in attempting to settle the respondent's debt. As the respondent was bound by his pleadings and as there was nothing in the evidence of the respondent to suggest that the repayment of the loan for the redemption of the land was to be undertaken by Sidek Petronas, it was the appellant's submission that it was obvious that the respondent did not have the financial means to settle the debt on or before 20 August 2008. Moreover, there was no evidence that Sidek Petronas provided financial assistance to the respondent for the settlement of the debt, no evidence on the true identity of Sidek Petronas and no evidence on the connection between Sidek Petronas and the agreement. The respondent therefore cannot demand for the return of the land as he failed to exercise his right to redeem it within the given time period; and

(d) Sidek Petronas was not called as a witness of the respondent to corroborate the respondent's version that the repayment of the loan was to be undertaken by the former. As Sidek Petronas had allegedly played a significant role in the entire transaction, the failure on the part of the respondent to call Sidek Petronas as a witness, it was submitted, attracted the adverse presumption under s 114(g) of the Evidence Act 1950 against the respondent in testified, his evidence would have been unfavourable to the respondent.

[9] Based on the four points raised by the appellant, it was submitted that the respondent had failed to prove on a balance of probabilities that he was in a position and had the capability to settle the loan sum on or before 20 August 2008. In the circumstances the appellant had acquired indefeasible title over the land and was entitled to deal with the land in the manner he wished.

[10] Learned counsel for the respondent in his submission submitted that at all material time, the respondent was in the position to pay the loan. The respondent maintained his ground that the letter dated 15 July 2008 was posted to the appellant. The same letter was also hand delivered to the appellant on 8 August 2008 by PW3. Therefore the issue whether the respondent was ready to pay the loan was never in issue. Furthermore Sidek Petronas was ready with the money to pay to the appellant.

[11] In the alternative, learned counsel for the appellant submitted that even if the respondent was unable to pay the loan sum, the appellant had to sell the Land and return the balance to the respondent.

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[12] Having perused the pleadings, notes of evidence, witness statements: and submissions of learned counsels before us, we found that the respondent had failed to prove on the balance of probabilities that he was ready and willing to pay the loan to the appellant on or before 20 August 2008. The respondent had admitted in re-examination that he could not make the repayment because he did not have the money — see p 107 of the RR, vol 2:

> S: Tadi kamu juga memberitahu kepada mahkamah, kenapa kamu sendiri tidak mahu bayar RM60 ribu tapi mahu tunggu orang lain bayar RM60 ribu itu?
>
> J: Saya tidak bayar RM60 ribu itu disebabkan masa perjanjian itu, tanah telah diberikan kepada Defendan dan saya tak ada wang untuk bayar.

The reference to Sidek Petronas's role in the repayment of the loan sum was never pleaded and therefore should not be taken into account to support the respondent's claim. And in any case, we agreed with the appellant's submission that the non-calling of Sidek Petronas by the respondent would attract the invocation of s 114(g) of the Evidence Act 1950 against the respondent.

[13] We found that the learned trial judge had misdirected himself when he accepted the respondent's testimony that the letter dated 15 July 2008/P2 was sent and received by the appellant when evidence showed that the said letter could not have been received by the appellant when it was posted on 17 August 2008, that is, more than a month after the date of the letter was written. The learned judge had failed to appreciate this fact and went on to accept the evidence of PW3 when PW3 stated that he had gone to the appellant's house, which was denied by the appellant, to inform the appellant that the respondent was ready to repay the loan together with the interest. The learned judge had also failed to appreciate the fact that since it was the respondent's land that was transferred to the appellant, and since the respondent knew the appellant's telephone number, why did the respondent see the need to deal with the appellant through an intermediary, PW3, and thus giving rise to unnecessary questions of who said what, who did what and so on. It was obvious to us that the learned judge, in accepting PW3's testimony did so without examining the issue whether the respondent was not only willing but also able to repay the loan. This to us amounted to a serious misdirection on His Lordship's part.

[14] As for the respondent's alternative submission that even if the respondent was unable to pay the loan sum, the appellant was required to sell the land and return the balance to the respondent, in the first place this aspect was not pleaded by the respondent in his statement of claim and it is trite law that the respondent was bound by his pleadings. Secondly, after studying the agreement, we found there was required the appellant to do so. The agreement was after all a 'Jual Janji agreement' and must be understood under its terms and conditions.

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Award sum of RM1.5m

[15] Moving on to the second issue, the learned counsel for the appellant submitted that the learned trial judge was in error when His Lordship relied on the valuation report P5 as a basis to award RM1.5m to the respondent. Without calling the property valuer as a witness who had prepared the report the authenticity and the contents of the valuation report remained doubtful. Therefore it should not be accepted as evidence. The learned trial judge in his reasoning stated that the valuation report could be accepted as evidence once it was placed in the agreed bundle of documents and the maker need not be called to testify based on the Federal Court case of *Henry Trading Co Ltd v Harun* [1966] 2 MLJ 281.

[16] It was submitted by learned counsel for the appellant that in this case at the beginning of trial there was no classification of documents into 'agreed bundle' and 'common bundle'. There were only three bundles of documents in this case, the plaintiff's bundle of documents marked as bundle B, the plaintiff's supplementary bundle of documents marked as bundle C, and the defendant's bundle of documents marked as bundle D (see p 82 of the RR, vol 2). Therefore the reason given by the learned trial judge was clearly erroneous and the case of *Henry Trading*'s case was not applicable.

[17] Moreover, it was submitted that P5 was produced and marked as such subject to an important qualification, that was, the contents of the said document remained disputed and must be strictly proven. This position was clearly reflected in the notes of proceedings on pp 91 and 97 of the appeal record vol 2 where it was recorded as follows:

> Peguam plaintif: Yang Arif, there is one exhibit to be tendered. Peguam defendan: I understand that my learned friend is having difficulties in calling the maker. He can tender the document but subject to cross examination, contents to be disputed. (P5-lkatan B, m/s 1–4).
>
> Peguam Defendan: Yang Arif, saya rujuk exhibit P5 iaitu laporan penilaian (valution report), dalam Ikatan B m/s 1–4
>
> > S: Saya katakan kepada saksi ini, laporan ini tidak boleh diterimapakai kerananya tidak mengatakan bagaimana penilaian RM2.2 juta dicapai. Kita sudah baca laporan ini dan dia tidak katakan apa kriteria atau faktor yang dirujuk untuk mencapai RM2.2juta.
> >
> > J: Tidak setuju.
>
> Peguam Defendan: Isu ini akan disubmitkan
>
> Hakim: Kandungan P5 dipertikaikan.
>
> Peguam Defendan: Ya, kandungan P5 dipertikaikan.

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The learned judge, it was submitted, had committed a fundamental error in failing to consider the express qualification made on the marking of the valuation report as exh P5.

[18] It was submitted for the appellant that the disputed contents of the valuation report cannot be proven through the testimony of any witnesses other than the property valuer who professes the particular expertise. In this case, P5 was produced through PW2/the respondent, who made no comments with respect to its contents. Similarly PW3 did not make any comments on the contents of the report other than to state that he procured the valuation report from a third party and not directly from the firm of Smith Hodgkinson Ismail and Co. The third party is someone whom PW3 referred to as 'Arkitek Zul'. Consequently, it was submitted that the property valuer's report P5 should remain as inadmissible because the contents remained unproven and therefore hearsay. The Supreme Court case of *Malaysia National Insurance Sdn Bhd v Malaysia Rubber Development Corporation* [1986] 2 MLJ 124 was referred to at p 127 where Lee Hun Hoe CJ (as he then was) held that, at para D–E, left:

> Hearsay evidence which ought to have been rejected does not become admissible merely because no objection was taken earlier.

[19] It was further submitted that the learned judge also fell into error in awarding the sum of RM1.5m, which was not what the respondent had prayed for. The learned judge made the said award because according to him 'Sedikit diskaun wajar diberi bukan jumlah RM2.2 juta seratus peratus' without going further to elucidate why he thought a discount ought to be given in the first place.

[20] We had perused the appeal records and we agreed with the submissions of learned counsel for the appellant. We found the learned judge had erred when he found the valuer's report P5 to be in the agreed bundle of documents when it was actually found to be in the respondent's bundle of documents marked 'B'. The learned judge had also overlooked the fact that the report was marked P5 subject to its contents being disputed. Since the maker of the report was not called to testify, the contents of the report remained disputed and inadmissible. The learned judge had clearly misdirected himself when he accepted P5 as an exhibit of the court and had accordingly granted the award based on the report with a discount. There again the learned judge had given the discount without explaining cogently why discount was necessary especially seeing that the sum awarded was not the sum prayed for by the respondent.

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CONCLUSION

[21] For the reasons stated above, we found there were merits in the appeal and we were unanimous in allowing the appeal with costs of RM10,000. We set aside the decision of the High Court, and ordered.

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[22] The deposit be refunded to the appellant.

Appeal allowed with costs of RM10,000.

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Reported by Afiq Mohamad Noor

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